

SEARCH AND SEIZURE — Garbage and abandoned property

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If property has been discarded or abandoned, it is not subject to the "reasonable search" clause of the Fourth Amendment. In *Abel v. United States*, 362 U.S. 217 (1960), the defendant, a suspect in an espionage case, had checked out of his hotel room and the hotel had exclusive right to possession of the room. The F.B.I. received the hotel management's consent to search the room and, in a wastebasket in the room, they found incriminating evidence and seized it without any warrant. The defendant asserted that his Fourth Amendment rights were violated by the search and seizure of the evidence. The Supreme Court disagreed. The Court found that the defendant had abandoned the items left in the wastebasket and held, "There can be nothing unlawful in the Government's appropriation of such abandoned property." *Id.* at 241, citing *Hester v. United States*, 265 U.S. 57, 58 (1924). In *Hester*, the defendant was selling moonshine whiskey and, as the police chased him, he dropped containers later found to contain whiskey. The Court upheld the admissibility of the whiskey in evidence, stating, "there was no seizure in the sense of the law when the officers examined the contents of each after it had been abandoned."

The courts determine that an item of property has been abandoned if the defendant has given up all objectively reasonable expectation of privacy in the item.

The issue is not abandonment in the strict property-right sense, but whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search.

State v. Walker, 119 Ariz. 121, 126, 579 P.2d 1091, 1096 (1978), citing *United States v. Colbert*, 474 F.2d 174, 176 (5th Cir. 1973). "Because one cannot claim a reasonable

expectation of privacy in a place or thing one has abandoned, *State v. Myers*, 117 Ariz. 79, 570 P.2d 1252 (1977), *cert. denied*, 435 U.S. 928, 98 S.Ct. 1498, 55 L.Ed.2d 524 (1978); *State v. Childs*, 110 Ariz. 389, 519 P.2d 854 (1974), a person who has voluntarily abandoned his or her property lacks standing to object to a search or seizure of it." *State v. Fisher*, 141 Ariz. 227, 241, 686 P.2d 750, 764 (1984).

The test for abandonment in the search and seizure context is distinct from the property law notion of abandonment:

"It is possible for a person to retain a property interest in an item, but nonetheless to relinquish his or her reasonable expectation of privacy in the object." *U.S. v. Thomas*, 864 F.2d 843, 845 (D.C.Cir.1989). Upon abandonment, a person loses any legitimate expectation of privacy in the property and thereby disclaims any concern about whether the property or its contents remain private. *U.S. v. Veatch*, 674 F.2d 1217, 1220 (9th Cir.1981). A denial of ownership, when questioned, constitutes abandonment. *Id.* at 1221.

State v. Huffman, 169 Ariz. 465, 466-67, 820 P.2d 329, 330-31 (App. 1991).

A defendant may forfeit the objectively reasonable expectation of privacy in a number of ways. For example, placing garbage in communal trash receptacles usually constitutes abandonment for constitutional purposes. In *California v. Greenwood*, 486 U.S. 35 (1988), the United States Supreme Court found no Fourth Amendment violation when the police pressed the local garbage collector into service to aid them in obtaining access to the defendants' trash. The defendants were suspected of narcotics trafficking. After observing several vehicles making brief stops at their home late at night and in the early morning hours, an investigator "asked the neighborhood's regular trash collector to pick up the plastic garbage bags that Greenwood had left on the curb in front of his house and to turn the bags over to her without mixing their contents with garbage from

other houses." *Id.* at 37. The trash collector did so; when the investigator searched through the bags, she found items indicating narcotics use and used that information in obtaining a warrant to search Greenwood's home. The Court held that the defendants did not have any reasonable expectation of privacy in garbage in opaque bags which they had placed at the curb outside their house for regular trash collection, because they had "exposed their garbage to the public sufficiently to defeat their claim to Fourth Amendment protection." *Id.* at 40. The Court reasoned that "animals, children, scavengers, snoops, and other members of the public" could easily have gotten into the garbage, and noted that the defendants put the trash out "for the express purpose of conveying it to a third party, the trash collector, who might himself have sorted through [defendants'] trash or permitted others, such as the police, to do so." *Id.* Society as a whole has no understanding that garbage left for collection at the side of a public street deserves "the most scrupulous protection from government invasion." *Id.* at 43. Since the defendants had knowingly exposed their trash to the public, they had no reasonable expectation of privacy in the trash. *Compare State v. Dean*, 206 Ariz. 158, 76 P.3d 429 (exception to search warrant requirement in cases where automobile has been abandoned did not apply to police officer's warrantless search of defendant's automobile, which was parked in driveway of his residence) (2003).

A defendant may also abandon property, and thus lose any reasonable expectation of privacy in the property, by denying ownership of the property when asked if it is his. "A denial of ownership, when questioned, constitutes abandonment." *State v. Huffman*, 169 Ariz. 465, 467, 820 P.2d 329, 331 (App. 1991). And in *State v. Daniel*, 169 Ariz. 73, 817 P.2d 18 (App. 1991), the defendant borrowed a car from his cousin

and used it to get to, and escape from, a store robbery. He eventually parked the car and told his cousin to report it stolen. The Court of Appeals upheld the search of the car:

Appellant intentionally abandoned the vehicle when he told his cousin to report it as stolen. *State v. Asbury*, 124 Ariz. 170, 602 P.2d 838 (App.1979). Appellant had no standing to complain of the search and seizure of voluntarily abandoned property. *State v. Walker*, 119 Ariz. 121, 126, 579 P.2d 1091, 1096 (1978).

State v. Daniel, 169 Ariz. 73, 75, 817 P.2d 18, 20 (App. 1991).